

## REMARKS

Claims 1-25 are pending in the application after this amendment. In the following sections of the Amendment the rejections set forth by the Examiner in the June 5, 2006 Office action are addressed. These rejections are respectfully traversed, and detailed arguments are set forth below.

The Examiner rejected claims 1-23 under 35 USC §102(b) as being anticipated by U.S. Patent No. 5,569,242 to Lax et al. (the "Lax reference"). As the independent claims all include at least one claimed limitation that is not taught or suggested by the Lax reference, applicant respectfully submits that the independent claims are allowable. Further, applicant respectfully submits that the claims depending from the independent claims are allowable for the same reasons as well as for the specific structure claimed therein.

The Examiner rejected claims 1, 4-13, 16, 17, 20, 21, 24, and 25 under 35 USC §102(b) as being anticipated by U.S. Patent No. 6,929,640 to Underwood et al. (the "Underwood reference"). As amended the independent claims all include at least one claimed limitation that is not taught or suggested by the Underwood reference, applicant respectfully submits that the independent claims are allowable. Further, applicant respectfully submits that the claims depending from the independent claims are allowable for the same reasons as well as for the specific structure claimed therein.

All of the independent claims substantially claim the "tissue protecting region being sloped from said thin leading edge to a thick region for lifting vulnerable tissues away from a site of energy application to said at least one intervertebral disc" (claim 1) or "said tissue protecting region being sloped away from said energy application region and from said thin leading edge to a thick region for lifting vulnerable tissues away from a site of energy application" (claim 12). This is clearly shown, for example, in FIG. 6 of applicant's application. Further, this is discussed in the original application. For example, beginning at page 8, line 2, the following description can be found: "Significantly, the energy application head is preferably wedge-shaped and has a thin insertion edge sloped to a thick region for lifting vulnerable tissues away from a

site of energy application to the at least one intervertebral disc.” Please note that applicant has also defined the “thin leading edge,” for example, as “at least part of said rounded edge intersection” (claim 1) or “the anterior portion of a rounded edge intersection between said energy application region and said tissue protecting region” (claim 12).

Applicant respectfully submits that Examiner does not provide any support for his assertion that the Lax reference teaches or suggests the claimed feature of the “tissue protecting region being sloped from said thin leading edge to a thick region for lifting vulnerable tissues away from a site of energy application to said at least one intervertebral disc.” Applicant further respectfully submits that the Lax reference does not teach or suggest this claimed feature. The Lax reference does not have a “thin leading edge.” The Lax reference does not slope from the “thin leading edge to a thick region.” The Lax reference does not lift “vulnerable tissues away from a site of energy application.” Applicant respectfully requests more detail on where these features are taught or suggested in the Lax reference if this rejection is to be maintained.

Applicant respectfully submits that Examiner does not provide any support for his assertion that the Underwood reference teaches or suggests the claimed feature of the “tissue protecting region being sloped from said thin leading edge to a thick region for lifting vulnerable tissues away from a site of energy application to said at least one intervertebral disc.” Applicant further respectfully submits that the Underwood reference does not teach or suggest this claimed feature. Even if the leading edge of the Underwood reference can be characterized as a “thin leading edge,” (which applicant specifically does not admit), the Underwood device does not slope from the “thin leading edge to a thick region” and it does not lift “vulnerable tissues away from a site of energy application.” This is especially true because the active electrodes of the Underwood device are on the top surface of the support member. Applicant respectfully requests more detail on where these features are taught or suggested in the Underwood reference if this rejection is to be maintained.

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Amendment dated November 6, 2006  
Reply to Office action of June 5, 2005

The Examiner does not provide any support that either the Lax reference or the Underwood reference teach or suggest this claimed feature. Applicant respectfully submits that neither references teaches or suggests this claimed feature.

As neither the Lax reference nor the Underwood reference teach or suggest at least one feature claimed in the independent claims, applicant respectfully requests these references do not anticipate the independent claims that include this claimed feature or the claims dependent on the independent claims. Accordingly, applicant respectfully submits that the pending claims are allowable.

Applicant has chosen not to present arguments specific to each of the features in the independent claims or to the features in the pending dependent claims, but reserves the right to present arguments directed thereto in future communications.

The Examiner is requested to reexamine the application, to allow the claims, and to pass the application on promptly to issue.

A Petition for Extension of Time for two months is enclosed herewith. Please charge Deposit Account No. 50-2115 for any additional fees that may be required.

Respectfully submitted,



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